

Introduced by Senator Dunn

February 22, 2005

An act to add Section 354.9 to the Code of Civil Procedure, and to add Chapter 3.2 (commencing with Section 8253) to Division 1 of Title 2 of the Government Code, relating to Mexican repatriation.

LEGISLATIVE COUNSEL'S DIGEST

SB 645, as introduced, Dunn. Mexican repatriation: commission.

(1) Existing law establishes various advisory boards and commissions in state government with specified duties and responsibilities.

This bill would, until January 1, 2008, create the Commission during the 1930's within state government. The bill would require the commission to, among other things, gather facts regarding, and conduct a study of, the unconstitutional removal and coerced emigration of United States citizens and legal residents of Mexican descent, between 1929 and 1944, to Mexico during the 1930's "Repatriation" Program.

The bill would require the commission to hold public hearings and make a written report to the Governor and the Legislature concerning its actions and its findings and recommendations not later than July 1, 2009. The bill would provide that the commission may apply for and accept private funding. The bill would authorize the commission to be convened only if it is determined that sufficient private donations have been deposited with the state and would preclude expenditure of other state funds for these purposes.

The bill would provide that the commission terminates 6 months after it transmits its final report to the Governor and the Legislature on July 1, 2009.

(2) The bill would also establish the 1930's Reparations Fund in the General Fund and a nine member board of directors appoint by the Governor with the consent of the Senate with specified duties for administering the fund and making payments to eligible individuals. The bill would specify the duties of the board and require the board to make a report on its activities to the Governor and the Legislature beginning every 6 months after the first meeting of the board. The board would terminate 90 days after the termination of the fund.

(3) Existing law authorizes various persons to bring civil actions for damages under specified circumstances.

This bill would authorize a victim of unconstitutional, wrongful, or coerced repatriation, defined as any United States citizen or legal resident of Mexican descent who was coerced, forced, or falsely induced to emigrate from this state during the period from 1929 to 1944, or the victim's heir or beneficiary, to bring a legal action to recover damages in any court of competent jurisdiction in this state.

The bill would apply these provisions (1) if the victim was coerced, forced, or falsely induced to emigrate by any city, county, or state governmental authority, or anyone acting under color of that authority, including, but not limited to, any private individual or business entity, or (2) if that person resides in this state and has a claim arising out of that unconstitutional, wrongful, or coerced repatriation, as specified.

The bill would also provide that any action brought pursuant to this provision may not be dismissed for failure to comply with the applicable statute of limitations or to exhaust any applicable administrative remedies or governmental tort claims procedures, if the action is commenced on or before December 31, 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 354.9 is added to the Code of Civil
2 Procedure, to read:

3 354.9. (a) The following definitions govern the construction
4 of this section:

5 (1) "Victim of unconstitutional, wrongful, or coerced
6 repatriation" means any United States citizen or legal resident of
7 Mexican descent who was coerced, forced, or falsely induced to
8 emigrate from this state during the period from 1929 to 1944,

1 inclusive, by any city, county, or state governmental authority, or
2 anyone acting under color of that authority, including, but not
3 limited to, any private individual or business entity that conspired
4 with any city, county, or state governmental authority, or anyone
5 acting under color of that authority, to violate the state or federal
6 constitutional or property rights of that person

7 (2) “Damages” means any and all damages for any harm, loss,
8 or detriment sustained by any victim of unconstitutional,
9 wrongful, or coerced repatriation by reason of the coerced,
10 forced, or falsely induced emigration from this state by any city,
11 or county governmental authority, or anyone acting under color
12 of that authority, including, but not limited to, any private
13 individual or business entity that conspired with any city, county,
14 or state governmental authority, or anyone acting under color of
15 that authority, to violate the state or federal constitutional or
16 property rights of any victim of unconstitutional, wrongful, or
17 coerced repatriation.

18 (b) Notwithstanding any other provision of law, any victim of
19 unconstitutional, wrongful, or coerced repatriation, or the heir or
20 beneficiary of a victim of unconstitutional, wrongful, or coerced
21 repatriation, who has a claim arising out of the victim’s coerced,
22 forced, or falsely induced emigration from this state by any city,
23 county, or state governmental authority, or anyone acting under
24 color of that authority, including, but not limited to, any private
25 individual or business entity that conspired with any city, county,
26 or state governmental authority, or anyone acting under color of
27 that authority, to violate the state or federal constitutional or
28 property rights of any victim of unconstitutional, wrongful, or
29 coerced repatriation, may bring a legal action to recover any
30 damages in any court of competent jurisdiction in this state and
31 that court shall be deemed the proper forum for that action until
32 its completion or resolution.

33 (c) No legal action may be brought against the state by any
34 individual who is eligible to accept payment pursuant to The
35 1930’s Reparation Fund pursuant to Section 8254 of the
36 Government Code.

37 (d) No action brought under this section may be dismissed for
38 failure to do either of the following:

39 (1) Comply with the applicable statute of limitations.

1 (2) Exhaust any applicable administrative remedies or
2 governmental tort claim procedures otherwise provided by any
3 statute, if the action is commenced in any court of competent
4 jurisdiction on or before July 1, 2011.

5 SEC. 2. Chapter 3.2 (commencing with Section 8253) is
6 added to Division 1 of Title 2 of the Government Code, to read:

7
8 CHAPTER 3.2. THE COMMISSION ON THE
9 UNCONSTITUTIONAL DEPORTATION OF AMERICAN
10 CITIZENS DURING THE 1930'S.
11

12 8253. The Legislature finds and declares all of the following:

13 (a) Beginning in 1929, government authorities and certain
14 private sector entities in California and throughout the United
15 States undertook an aggressive program to forcibly remove
16 persons of Mexican ancestry from the United States.

17 (b) In California alone, approximately 400,000 American
18 citizens and legal residents of Mexican ancestry were forcibly
19 removed to Mexico.

20 (c) In total, it is estimated that two million people of Mexican
21 ancestry were forcibly relocated to Mexico, approximately 1.2
22 million of whom had been born in the United States, including
23 the State of California.

24 (d) Throughout California, massive raids were conducted on
25 Mexican-American communities, resulting in the clandestine
26 removal of thousands of people, many of whom were never able
27 to return to the United States, their country of birth.

28 (e) These raids also had the effect of coercing thousands of
29 people to leave the country in the face of threats and acts of
30 violence.

31 (f) These raids indiscriminately targeted persons of Mexican
32 ancestry, with authorities and others characterizing these persons
33 as “illegal aliens” even when they were United States citizens or
34 permanent legal residents.

35 (g) Authorities in California and other states instituted
36 programs to wrongfully remove persons of Mexican ancestry and
37 secure transportation arrangements with railroads, automobiles,
38 ships, and airlines to effectuate the wholesale removal of persons
39 out of the United States to Mexico.

1 (h) As a result of these illegal activities, families were forced
2 to abandon, or were defrauded of, personal and real property,
3 which often was sold by local authorities as “payment” for the
4 transportation expenses incurred in their removal from the United
5 States to Mexico.

6 (i) As a further result of these illegal activities, United States
7 citizens and legal residents were separated from their families
8 and country and were deprived of their livelihood and United
9 States constitutional rights.

10 (j) As a further result of these illegal activities, United States
11 citizens were deprived of the right to participate in the political
12 process guaranteed to all citizens, thereby resulting in the tragic
13 denial of due process and equal protection of the laws.

14 8253.1. (a) The Commission on the Unconstitutional
15 Deportation of American Citizens during the 1930’s is hereby
16 established within state government.

17 (b) The commission shall be composed of 12 voting members,
18 who shall be appointed as follows:

19 (1) Four members appointed by the Governor, not subject to
20 Senate confirmation.

21 (2) Four members appointed by the Senate Committee on
22 Rules.

23 (3) Four members appointed by the Speaker of the Assembly.

24 (c) The commission shall also include the following:

25 (1) Two ex officio, nonvoting members of the Senate
26 appointed by the Senate Committee on Rules.

27 (2) Two ex officio, nonvoting members of the Assembly
28 appointed by the Speaker of the Assembly.

29 (d) Of the four members appointed by the Governor, the four
30 members appointed by the Senate Committee on Rules and the
31 four members appointed by the Speaker of the Assembly, as set
32 forth in subdivision (b), each of the four shall include one of each
33 of the following:

34 (1) A California public university professor.

35 (2) An attorney in private practice in California.

36 (3) A representative of a nonprofit organization that advocates
37 on behalf of Latinos and immigrants.

38 (4) A public member.

39 (e) The term of office for all members shall be for the duration
40 of the commission. A vacancy in the commission shall not affect

1 its powers, and shall be filled in the same manner in which the
2 original appointment was made.

3 (f) Seven members of the commission shall constitute a
4 quorum, but a lesser number may hold meetings and hearings.

5 (g) The commission shall elect a chair and vice chair from
6 among its members. The term of office of each shall be for the
7 duration of the commission.

8 (h) Members of the commission shall serve without
9 compensation. All members of the commission may be
10 reimbursed for travel, subsistence, and other necessary expenses
11 incurred by them in the performance of their duties if funds are
12 available for these purposes. No state funds, other than private
13 donations available to the commission pursuant to this chapter,
14 shall be appropriated to reimburse members for expenses or for
15 any other purpose under this chapter.

16 8253.2. (a) It shall be the duty of the commission to gather
17 facts regarding, and conduct a study of, the unconstitutional
18 removal and coerced emigration of United States citizens and
19 legal residents of Mexican descent, between 1929 and 1944, to
20 Mexico, during the government sponsored repatriation program
21 of the 1930's.

22 (b) The commission shall hold public meetings or hearings in
23 any city that the commission deems necessary and proper.

24 (c) The commission shall make recommendations to the
25 Governor and the Legislature including, but not limited to, all of
26 the following:

27 (1) Altering California public schools' curricula to include the
28 unconstitutional removal and coerced emigration of American
29 citizens and legal residents to Mexico during the 1930's, as
30 described in Section 8253.

31 (2) Determining responsibility for the unconstitutional
32 removal and coerced emigration of American citizens and legal
33 residents to Mexico during the 1930's.

34 (3) Implementing the fund, as set forth in Section 8254
35 including:

36 (i) Determining the appropriate monetary compensation for
37 eligible recipients of the fund.

38 (ii) Establishing eligibility criteria for compensation under the
39 fund.

1 (iii) Recommending redress legislation necessary to activate
2 the fund.

3 (4) The commission may make other findings or
4 recommendations it deems necessary to discharge its duties.

5 (d) The commission shall submit a written report of its
6 findings and recommendations to the Governor and the
7 Legislature within two years after the commission has
8 commenced its research and study, as set forth in subdivision (a)
9 of Section 8253.2.

10 8253.3. (a) The commission may authorize any subcommittee
11 or member thereof, for the purpose of carrying out this chapter,
12 to hold hearings and sit and act at those times and places, and
13 request the attendance and testimony of those witnesses and the
14 production of books, records, correspondence, memoranda,
15 papers, and documents that the commission or any subcommittee
16 or member thereof may deem advisable.

17 (b) The commission may acquire directly from the head of any
18 department, agency, independent instrumentality, or other
19 authority of the executive and legislative branches of state
20 government, any and all necessary information that the
21 commission considers useful in the discharge of its duties. All
22 departments, agencies, and independent instrumentalities, or
23 other authorities of the executive and legislative branches of state
24 government shall cooperate with the commission and furnish all
25 information requested by the commission.

26 (c) The commission may acquire directly from the head of any
27 department, agency, independent instrumentality, or other
28 authority of local government, at the discretion of the head of the
29 relevant authority of local government, any and all necessary
30 information that the commission considers useful in the
31 discharge of its duties.

32 8253.4. (a) The commission is authorized to do all of the
33 following:

34 (1) Appoint and fix the compensation of such personnel as
35 may be necessary.

36 (2) Obtain the services of experts and consultants.

37 (3) Enter into agreements for procurement of necessary
38 financial and administrative services, for which payment shall be
39 made by reimbursement from funds of the commission.

1 (4) Procure supplies, services, and property, and make
2 contracts, for which payment shall be made by reimbursement
3 from funds of the commission.

4 (5) Enter into contracts with state or federal agencies, private
5 firms, institutions, and agencies for the conduct of research or
6 surveys, the preparation of reports, and other activities necessary
7 to the discharge of its duties.

8 (b) The commission shall, not later than July 1, 2009, transmit
9 a final report to the Governor and the Legislature concerning its
10 actions and its findings and recommendations.

11 8253.6. The commission may apply for and accept grants and
12 receive gifts, donations, and other financial support from private
13 sources for purposes of this chapter, subject to the requirements
14 of Sections 11005 and 11005.1.

15 8253.7. (a) The commission shall be convened pursuant to
16 this chapter only after a determination has been made that private
17 donations in an amount sufficient to support the activities of the
18 commission through the operative period of this chapter have
19 been deposited with the state.

20 (b) The commission shall end, and its duties under Sections
21 8253.2, 8253.3, and 8253.4 shall be revoked, not later than six
22 months after it has transmitted a final report to the Governor and
23 the Legislature concerning its actions and its findings and
24 recommendations under subdivision (b) of Section 8253.4.

25 8254. There is established the 1930's Reparations Fund
26 (hereinafter the fund) in the General Fund. There is also
27 established the 1930's Reparations Fund Board of Directors
28 (hereinafter the board), which shall be responsible for making
29 disbursements from the fund upon appropriation by the
30 Legislature in the manner provided in Sections 8254.1 and
31 8254.2.

32 (a) An eligible individual may notify the board that he or she
33 is an eligible individual, and may provide documentation
34 therefor. The board shall do all of the following:

35 (1) Designate an officer or employee to whom the notification
36 and documentation may be sent.

37 (2) Maintain a list of all individuals who submit the
38 notification and documentation.

1 (3) Encourage, through a public awareness campaign, each
2 eligible individual to submit his or her current address to the
3 designated officer or employee.

4 (b) The board shall notify each eligible individual in writing of
5 his or her eligibility for payment under this section. The notice
6 shall inform the eligible individual of the following:

7 (1) Acceptance of payment under this section shall be in full
8 satisfaction of all claims against the State of California arising
9 out of the acts described in Section 8253.

10 (2) Refusal to accept payment shall:

11 (A) Be submitted in writing to the board and the amount of the
12 payment shall remain in the fund and no payment may be made
13 to that individual at any time after his or her refusal.

14 (B) Be in full satisfaction of all claims against the State of
15 California arising out of the acts described in Section 8253.

16 (3) Each eligible individual who neither refuses nor accepts
17 payment, 18 months after receiving a written notice shall be
18 deemed to have accepted payment for purposes of subdivision
19 (c).

20 (c) The acceptance of payment by an eligible individual shall
21 be in full satisfaction of all claims against the State of California
22 arising out of the acts described in Section 8253.

23 (d) No payment may be made to any individual who accepts
24 payment pursuant to an award of a final judgment or a settlement
25 on a claim against the State of California for any of the acts
26 described in Section 8253.

27 (e) The board shall endeavor to make payments to eligible
28 individuals in the order of date of birth, beginning with the oldest
29 individual on the date of the enactment of this act, until all
30 eligible individuals have received payment in full.

31 (f) In attempting to locate an eligible individual, the board
32 may use any facility or resource of any public or nonprofit
33 organization or any other record, document, or information that
34 may be made available to the board.

35 (g) No costs incurred by the board shall be paid from the fund
36 or set off against, or otherwise deducted from, any payment to
37 any eligible individual.

38 8254.1. (a) The board may make disbursements from the
39 fund as to either of the following:

1 (1) To publish and distribute the hearings, findings, and
2 recommendations of the commission.

3 (2) For reasonable administrative expenses of the board,
4 including expenses incurred under subdivisions (c), and (f).

5 (b) The Board shall be composed of nine members appointed
6 by the Governor with the consent of the Senate.

7 (1) Except as provided in paragraphs (2) and (3), members
8 shall be appointed for terms of three years.

9 (2) Of the members first appointed, four shall be appointed for
10 terms of two years, as designated by the Governor at the time of
11 appointment.

12 (3) Any member appointed to fill a vacancy occurring before
13 the expiration of that member's term shall be appointed only for
14 the remainder of that term. A member may serve after the
15 expiration of a member's term until a new member is appointed.
16 No person may be appointed as a member for more than two
17 consecutive terms.

18 (c) Members of the board shall serve without pay, except that
19 members of the board shall be entitled to reimbursement for
20 travel, subsistence, and other necessary expenses incurred by
21 them in carrying out the duties of the board.

22 (d) Five members of the board shall constitute a quorum.

23 (e) The chair of the board shall be elected by the members of
24 the board.

25 (f) The board shall have an executive director who shall be
26 appointed by the board. The board may appoint and fix the pay of
27 additional staff as it may require.

28 (g) The board may accept, use, and dispose of gifts or
29 donations of services or property for the purposes authorized
30 under subdivision (a).

31 (h) Not later than 12 months after the first meeting of the
32 board and every six months thereafter, the board shall transmit to
33 the Governor and to the Legislature a report describing the
34 activities of the board.

35 (i) Ninety days after the termination of the fund, the board
36 shall terminate and all obligations of the board under this chapter
37 shall cease.

38 8254.2 The provisions of this chapter are severable. If any
39 provision of this act or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

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